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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
ICO SERVICES LIMITED)
)
Petition for Expedited Rulemaking To)
Establish Eligibility Requirements for the)
2 GHz Mobile Satellite Service)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RM 9328

COMMENTS OF TMI

TMI Communications and Company, Limited Partnership ("TMI"), by its attorneys, hereby files its comments on the above-captioned petition of ICO Services, Ltd ("ICO").

TMI is a Canadian-licensed MSS operator which currently provides service in the L-Band (1.5/1.6 GHz) via a single geostationary satellite (MSAT-1) located at 106.5 W.L. TMI has filed a Letter of Intent ("LOI") in the FCC's 2 GHz mobile satellite proceeding which the FCC has preliminarily deemed to be "acceptable for filing."¹ Accordingly, TMI has a vital interest in any action the FCC might take as a consequence of the ICO petition.

Background

TMI agrees with ICO that the FCC should act expeditiously to adopt service rules for 2 GHz MSS operations. Indeed, in its June 3, 1998 comments, TMI endorsed the rapid development of such rules. However, TMI coupled that endorsement with support for a deferral of action on all 2 GHz MSS applications until: (a) appropriate rules had been adopted for 2 GHz MSS; (b) all parties had had a reasonable opportunity to amend their applications or LOIs as appropriate, in response to

¹ See Public Notice, Report No. SPB-199, released March 19, 1998.

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the new rules; and (c) interested parties had been afforded an opportunity to file further comments on the new rules and any amended applications and LOIs.

ICO now proposes, in essence, that the FCC act to grant its application on terms favorable to it and detrimental to other applicants, including TMI, before any of these necessary actions has been taken. TMI objects strongly to this procedure. The FCC should not consider ICO's application apart from the general rulemaking proceeding. Further, apart from the procedural impropriety of what ICO proposes, TMI would call attention to the following substantively unfair aspects of the ICO proposal.

I. ICO Proposes An Unfair Distribution of Frequencies Between Geostationary and Non Geostationary Systems

In the draft Section 25.137 (d) (2) of the FCC's rules which ICO has submitted, it is stated that NGSO "constellations of satellites" shall have access to 60 MHz of the 70 MHz of spectrum allocated to MSS systems (1990-2020 MHz [uplinks] and 2170-2220 MHz [downlinks]) while geostationary systems will have access to only 20 MHz of spectrum (2015-2025 MHz [uplink] and 2165-2175 MHz [downlink]).

This is obviously disadvantageous to TMI and other applicants which have proposed geostationary, regional configurations. In the absence of rules, ICO's proposal amounts to a premature "spectrum grab" which will provide the majority of available spectrum for ICO and thus disadvantage TMI and other 2 GHz applicants.

In its 1997 order allocating the 70 MHz of spectrum (1990-2025 MHz, 2165-2200 MHz) to the MSS, the FCC expressly refused to make spectrum allocations between GSO and NGSO MSS

systems or to choose between global and "domestic only" configurations.² It deferred those decisions until a subsequent phase of the proceeding.

Moreover, those crucial determinations should obviously be subject to the same notice and comment procedures as are customary when decisions of this magnitude must be made by the FCC. The complexity of the issues ICO would have the FCC prematurely decide is belied by the deceptive simplicity of its presentation.

For example, as the FCC noted in the First Report and Order, WRC-95 reallocated the 2010-2025 MHz portion of the 2 GHz MSS spectrum to MSS in Region 2, effective January, 2005.³

It is TMI's view that regional GSO MSS systems should have access to all allocated MSS spectrum. The WRC-95 allocation was made to offset the 10 MHz of MSS spectrum (1980-1990 MHz) which was allocated for use in Regions 1 and 3, with very restrictive provisions for use of that spectrum in parts of Region 2 and with that spectrum not available for use in most Region 2 countries.

ICO, however, would allocate the 2010-2015 MHz portion of that spectrum to NGSO systems exclusively (for a total of 25 MHz for NGSO systems exclusively), the 2015-2020 MHz portion to both NGSO and GSO systems, and only the 2020-2025 MHz portion to GSO systems exclusively. ICO's plan would thus make it almost impossible for GSO systems to coordinate sufficient spectrum for operation of their systems. There is no technical rationale for either NGSO

² In the Matter of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Using the Mobile Satellite Service First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 7388 7407-7410 (1997). ("First Report and Order")

³ First Report and Order, *supra*, at 12 FCC Rcd 7395.

on GSO systems to be limited to just a portion of the bands of interest. TMI strongly opposes such a one-sided subdivision of the 2 Ghz MSS spectrum.

ICO's proposal would also put increased pressure on terrestrial broadcast auxiliary systems ("BAS") still using the 1990-2110 MHz spectrum. The ability of BAS to relocate from that spectrum already has been placed in doubt by provisions of the 1997 Budget Act which require that 20 MHz (2110-2130 MHz) of the spectrum (2025-2130 MHz) to which BAS systems were to be relocated must itself be auctioned by 2002.⁴ However that issue is resolved, clearly any action by the FCC which would increase competing spectrum usage in the 2010-2025 MHz band beyond that present in the remainder of the 2 Ghz band (1990-2010 MHz) will make it more difficult to provide regional MSS service.

In any case, the FCC should only act on MSS spectrum allocations after considering all the relevant factors, and not merely in response to of ICO's self interested proposals.

II. The FCC Should Not Now Establish A Distinction Between "New Entrants" and "Incumbent Operators"

In its petition, ICO repeats an argument which it has made previously, namely that the FCC should first "conditionally license" applicants, such as itself, which have not already been assigned spectrum to provide MSS in the United States and only afterward grant additional spectrum to present L-Band licensees. (Petition pp. 4-5).

TMI has previously discussed this issue and will not repeat its arguments here. We would

⁴ See Balanced Budget Act of 1997, Public Law 105-33, Section 3002 (c), 111 Stat 251, 1997 U.S. Code Cong. and Admin. News, p. 195.

note again that 2 GHz MSS is a new service and that therefore there can be no "incumbent" operators. Further, the current rules governing 2 GHz MSS reflect the FCC's explicit decision in the First Report and Order that it not grant any priority to "new entrants." Thus, the FCC's rules and policies provide no basis for preferring, "conditionally" or otherwise, applicants such as ICO, which hold no MSS spectrum, over applicants such as TMI, which do.

In any case, TMI believes that "grant priority" issues should be resolved in the same way and at the same time as all the other MSS technical issues should be, namely in a notice and comment rulemaking following the issuance of an NPRM.

Finally, ICO has argued (Petition, p.3) that since its satellites are under construction and that it has already secured significant investment the FCC should act on its application now. However, ICO is proposing a global system and an incomplete licensing process in any one country, such as the U.S., is most unlikely to halt ICO's system development and implementation. The U.S. comprises only a part of the proposed market and is served by two MSS operators as well as various terrestrial mobile systems. Thus, there is no reason why ICO's application should receive special treatment from the FCC. All applicants, in TMI's view, should receive equal treatment and the FCC should take the necessary time to reach correct decisions on these critical issues.

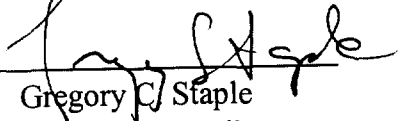
Conclusion

For the foregoing reasons, the FCC should deny ICO's petition but should proceed expeditiously to a rulemaking proceeding in which the issues ICO raises can be considered and resolved.

Respectfully submitted,

**TMI COMMUNICATIONS AND
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August 27, 1998

CERTIFICATE OF SERVICE

I, Aileen M. London, a secretary in the law offices of Koteen & Naftalin, L.L.P., hereby certify that on this 27th day of August, 1998, copies of the forgoing "COMMENTS OF TMI" were sent, by first-class U.S. mail, postage prepaid, to the following:

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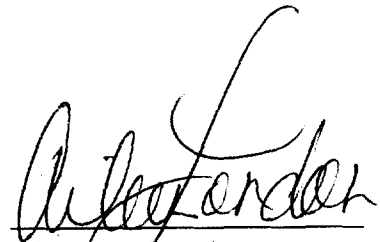
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